

## **REMARKS**

**[0002]** Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-37 are presently pending. Claims amended herein are 1-4, 5, 6, 8, 16, 25-29, and 34-37. No claims are withdrawn or cancelled herein. No new claims added herein.

### **Statement of Substance of Interview**

**[0003]** The Examiner graciously talked with me—the undersigned representative for the Applicant—on 2 March 2009. Applicant greatly appreciates the Examiner's willingness to talk. Such willingness is invaluable to both of us in our common goal of an expedited prosecution of this patent application.

**[0004]** During the interview, I discussed how the claims differed from the cited reference, namely Moulios. Without conceding the propriety of the rejections and in the interest of expediting prosecution, I also proposed several possible clarifying amendments.

**[0005]** The Examiner was receptive to the proposals, specifically the clarification regarding analysis of an audio file by a media player. However, the Examiner indicated that he would need to review the cited art more carefully and do another search, and requested that the proposed amendments be presented in writing.

**[0006]** Applicant herein amends the claims in the manner discussed during the interview. Accordingly, Applicant submits that the pending claims are allowable over the cited art of record for at least the reasons discussed during the interview.

### **Formal Request for an Interview**

[0007] If the Examiner's reply to this communication is anything other than allowance of all pending claims and there only issues that remain are minor or formal matters, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can talk about this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0008] Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. My contact information may be found on the last page of this response.

### **Allowable Subject Matter**

[0009] Applicant would like to thank the Examiner for allowing claims 8-24. These claims have not been substantively amended herein, and therefore remain allowable.

### **Claim Amendments**

[0010] Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 1-4, 5, 6, 8, 16, 25-29, and 34-37 herein. Applicant amends claims to clarify claimed features. Such amendments are made to expedite prosecution and more quickly identify allowable subject matter. Such amendments are merely intended to clarify the claimed features, and should not be construed as further limiting the claimed invention in response to the cited references.

## **Substantive Matters**

### **Claim Rejections under § 102 and § 103**

[0011] Claims 1-37 are rejected under 35 U.S.C. § 102 and § 103. In light of the amendments presented herein and the agreements reached during the above-discussed Examiner interview, Applicant submits that these rejections are moot. Accordingly, Applicant asks the Examiner to withdraw these rejections.

[0012] The Examiner rejects claims 1-2, 4-7, 25-34, 36-37 under § 102. For the reasons set forth below, the Examiner has not shown that the cited reference anticipate the rejected claims.

[0013] In addition, the Examiner rejects claims 3, 35, 25-28 under § 103. For the reasons set forth below, the Examiner has not made a prima facie case showing that the rejected claims are obvious.

[0014] Accordingly, Applicant respectfully requests that the § 102 and § 103 rejections be withdrawn and the case be passed along to issuance.

[0015] The Examiner's rejections are based upon the following references alone or in combination:

- **Moulios:** *Moulios, et al.*, US Patent No. 7,189,913 (issued March 13, 2007); and
- **Takenaka:** *Takenaka, et al.*, US Patent No. 6,807,450 (issued October 19, 2004).

## **Cited References**

**[0016]** The Examiner cites Moulios as the primary reference in the anticipation- and obviousness-based rejections. The Examiner cites Takenaka in the obviousness-based rejections.

### **Moulios**

**[0017]** Moulios describes a technology for implementing time compression and expansion of audio data, with dynamic tempo change during playback. (Abstract, Moulios)

### **Takenaka**

**[0018]** Takenaka describes a technology for removing spaces of silence between tracks of audio files.

## **Anticipation Rejections**

[0019] Applicant submits that the anticipation rejections are not valid because, for each rejected claim, no single reference discloses each and every element of that rejected claim.<sup>1</sup> Furthermore, the elements disclosed in the single reference are not arranged in the manner recited by each rejected claim.<sup>2</sup>

### **Based upon Moulios**

[0020] The Examiner rejects claims 1-2, 4-7, 25-34, 36-37 under 35 U.S.C. § 102(e) as being anticipated by Moulios. Applicant respectfully traverses the rejection of these claims. Based on the reasons given below, Applicant asks the Examiner to withdraw the rejection of these claims.

### **Amended Independent Claims 1, 25, 29, and 34**

[0021] Applicant submits that Moulios does not anticipate these amended claims because it does not disclose at least the following features as similarly recited in these claims (in part, emphasis added):

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<sup>1</sup> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); also see MPEP §2131.

<sup>2</sup> See *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

progressively **analyzing consecutive data samples of [an] audio file**...to determine a data sample wherein a threshold is reached...

**[0022]** The Examiner indicates that Moulios discusses this feature at the following locations: fig. 2-3, 6, 8; col. 4 line 4-20 and 57-65; col. 6 lines 10-40; col. 11 lines 34-36. Applicant respectfully disagrees.

**[0023]** If the indicated sections of Moulios are read in context it is apparent to one of ordinary skill in the art that Moulios merely discusses the **modification** of "transient sounds" in order to comply with tempo, rhythm, and fade parameters dictated by the user with the purpose of authoring an original audio file. The modification of particular sounds to comply with parameters to create an audio file is not equivalent with progressively analyzing consecutive data samples of [an] audio file...to determine a data sample wherein a threshold is reached.

**[0024]** Furthermore, Moulios is directed to the modification of sound to fit into a new file while the claims are directed to the playback of audio files. Hence, Moulios does not discuss progressively analyzing consecutive data samples of [an] audio file...to determine a data sample wherein a threshold is reached.

**[0025]** Consequently, Moulios does not disclose all of the elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejections of this claims.

## **Dependent Claims**

**[0026]** In addition to its own merits, each dependent claim is allowable for the same reasons that its base claim is allowable. Applicant requests that the Examiner withdraw the rejection of each dependent claim where its base claim is allowable.

## **Conclusion**

[0027] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call or email me at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC  
Representatives for Applicant

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